

1 Home Television Territories by Major League

2 Baseball as any indicia of demand?

3 A Yes, I believe my testimony does
4 state that.

5 Q Can you show me where in your
6 testimony?

7 A Can you save me some time and
8 point out the paragraph, or get me in the
9 area?

10 Q I didn't think it was in here any
11 more.

12 A Do you want me to go through this
13 whole thing and see if it's in there?

14 JUDGE SIPPEL: Yes. Why don't we
15 go off the record, and you can -- you want an
16 answer to this question.

17 MR. KIRK: I do.

18 JUDGE SIPPEL: Let's go off the
19 record. Let him -

20 (Whereupon, the proceedings went
21 off the record at 4:20:57 p.m., and went back
22 on the record at 4:23:43 p.m.)

1 JUDGE SIPPEL: All right. Back on
2 the record. Do you have the question in your
3 mind?

4 THE WITNESS: Yes, I think I do
5 have the question. I remember talking with
6 you in-depth about Major League Baseball's
7 creation of the Home Television Tour last time
8 we were together, and it's not in this
9 testimony, but whether it's another
10 declaration I did, or first declaration I did.
11 Yes, I remember talking about it in those
12 declarations. I remember talking about it
13 with you.

14 BY MR. KIRK:

15 Q Why is it not in this written
16 testimony?

17 A I'm not a lawyer. Legally, tell
18 me why it would have to be in there.

19 Q You just indicated we had talked
20 about it previously. It was in your prior
21 declaration, and, yet, it's not in your
22 written testimony. And I'm just trying to

1 determine why you decided not to put it in
2 your written testimony.

3 MR. FREDERICK: Objection, Your
4 Honor. He's asking for attorney-client
5 privileged information. We have designed the
6 direct testimonies to streamline the case to
7 present just those facts that the witness can
8 speak to. And he's asking about --
9 essentially, he's asking about lawyer
10 strategy. This information is in other
11 witnesses' testimony, and he can cross examine
12 the other witness about that question at that
13 time.

14 JUDGE SIPPEL: Well, he hasn't
15 asked to relay any legal advice. He simply
16 wants to know why it's not there. Now,
17 there's a number of ways in which you might
18 get an answer. One of those may cause the
19 problem you're raising, but let's see what he
20 can do. Let's hear what the witness says.

21 MR. KIRK: Your Honor, it's also
22 important, because it was a major part of his

1 prior declaration. And, in fact, the Media
2 Bureau relied upon this issue fan demand,
3 Major League Baseball, in the hearing
4 designation order. So I'm entitled to find
5 out why he's taken it out.

6 JUDGE SIPPEL: Okay. Now, let me
7 -- are you talking -- was this in a
8 declaration that was in support of the
9 complaint?

10 MR. KIRK: Correct.

11 JUDGE SIPPEL: All right. I'm
12 sorry. Yes, you can ask him the question.
13 Let's see how far you can get with it. Go
14 ahead. Do you know what the question is?
15 What was in the declaration is now not in your
16 written testimony. Without saying anything
17 about what an attorney told you, do you have
18 any -- do you have a reason -- can you state
19 a reason as to why it's not there?

20 THE WITNESS: No, I have no reason
21 why it's not there. I mean, I didn't exclude
22 it for any purposes. I'm not trying to hide

1 anything. I've debated, or talked to, and
2 answered Bob's questions about that, I don't
3 want to say ad nauseam, but it was a long time
4 last time.

5 JUDGE SIPPEL: All right. That's
6 okay. No, I think that there's a valid
7 objection to it. It would be getting into
8 privileged material, so I'll leave it the way
9 it is.

10 BY MR. KIRK:

11 Q During the deposition that we had
12 together, you recall the discussions we had
13 regarding Major League Baseball and whether or
14 not the design of those territories were based
15 on fan demand. Correct?

16 A I remember those discussions, yes.

17 Q Okay. Did you provide any
18 personal knowledge as a basis for the
19 statement in your prior declaration that the
20 Major League Baseball territories were
21 designed based on fan demand?

22 MR. FREDERICK: Objection, Your

1 Honor. If it's not in the direct testimony,
2 it's not a proper subject for cross
3 examination, is it?

4 JUDGE SIPPEL: Well, he's going
5 back to his deposition. That's perfectly
6 allowable.

7 MR. FREDERICK: Well, the direct
8 testimony was after his deposition. And the
9 direct testimony is what he's testifying to in
10 this proceeding.

11 JUDGE SIPPEL: Well, it's cross
12 examination. He can be cross examined on a
13 deposition, if it's basically the same subject
14 matter.

15 MR. FREDERICK: The point is that
16 it's not the same subject matter. He's just
17 said it wasn't in his written direct testimony
18 for this case.

19 MR. KIRK: The HDO relies on fan
20 demand in Major League Baseball territories,
21 something taken out of his written testimony
22 based on the deposition. I think I'm entitled

1 to talk to him about it.

2 MR. FREDERICK: The HDO also will
3 have the opportunity -- the Court will have
4 the opportunity through Mr. Wyche to discuss
5 Major League Baseball television territories.
6 That is in Mr. Wyche's direct testimony, and
7 he'll have an opportunity to cross examination
8 Mr. Wyche about the creation of Major League
9 Baseball Television Territories.

10 JUDGE SIPPEL: Now, what we've got
11 here is -- hold on just a second now. We've
12 got here -- we have two significant documents
13 that were submitted under oath relating to the
14 issues in this case that seem to be -- that
15 don't dovetail. They don't coincide in all
16 respects. And I certainly think that in light
17 of the fact that both of them are in here, are
18 in the case under oath, that -- his
19 declaration is under oath. Isn't that right?

20 MR. KIRK: That's correct.

21 JUDGE SIPPEL: And his testimony
22 is under oath.

1 MR. KIRK: That's correct, Your
2 Honor.

3 JUDGE SIPPEL: Well, we've got to
4 find out which one is right. Which one is
5 right?

6 THE WITNESS: I'm sorry?

7 JUDGE SIPPEL: Your declaration or
8 your testimony, which is correct?

9 MR. FREDERICK: I would object,
10 Your Honor. They're both correct. He's sworn
11 to the accuracy of both of them. The fact
12 that he's not included every jot and tittle of
13 information in his direct testimony does not
14 make his prior testimony incorrect, or untrue
15 in any way.

16 JUDGE SIPPEL: No, but there's --
17 all right. I'll rephrase the question then.
18 Which is more correct? They both may be
19 correct, but which is more correct?

20 THE WITNESS: Sir, are you talking
21 just in terms of that one issue on MLB?

22 JUDGE SIPPEL: Just what you --

1 the question that is being asked by Mr. Kirk.

2 The subject matter appears in a declaration

3 that you signed under oath.

4 THE WITNESS: That's right.

5 JUDGE SIPPEL: In support of the

6 complaint in this case.

7 THE WITNESS: That's correct.

8 JUDGE SIPPEL: It does not appear

9 in your sworn testimony, which you also signed
10 under oath.

11 THE WITNESS: That's correct.

12 JUDGE SIPPEL: I'm simply asking,

13 which of those two sworn statements,

14 declaration or sworn written testimony, is the

15 more correct version of the event.

16 MR. FREDERICK: Your Honor, may I

17 object here? We can voir dire him on the

18 question of the prior statement, if you want,

19 but this is not proper subject for cross

20 examination, simply because he chose certain

21 subjects to amplify on in his direct

22 testimony. And if you'd like us to conduct

1 voir dire on his other statements concerning
2 MLB Television Territories, we'll be glad to
3 do that.

4 JUDGE SIPPEL: I think I'm
5 entitled to an answer to this question.

6 MR. FREDERICK: I'm trying -

7 JUDGE SIPPEL: He told two
8 versions -- he's told two versions, one to the
9 declaration, one for this, of matter which is
10 relevant to the case. Because if it's not
11 relevant to the case, then we might as well
12 strike that provision in the hearing
13 designation order, and let's go on to
14 something else. But I'm certainly entitled to
15 get an answer, which is the better of the
16 factual assertions to the Commission? I'm
17 entitled to that answer. That's got nothing
18 to do with attorney-client privilege.

19 MR. FREDERICK: Certainly, Your
20 Honor. It's just that there were multiple
21 witnesses who talked about that issue that the
22 HDO referenced. Mr. Wyche also did, as well.

1 JUDGE SIPPEL: So, maybe we can
2 ask Mr. Wyche the same question.

3 MR. FREDERICK: And we -

4 JUDGE SIPPEL: What -- no, this is
5 it. I want to hear an answer to this
6 question. I'm overruling that objection. Do
7 you understand my question?

8 THE WITNESS: If you ask me one
9 more time, I'll be happy to answer it.

10 JUDGE SIPPEL: Okay. You gave two
11 versions of the situation with respect to Mr.
12 Kirk's question. I don't want to recast it,
13 because I might confuse you more. But the
14 fact remains is that in the declaration there
15 was more information -- you included that
16 information, and this one it's not included.
17 And all I'm asking you is -- you don't have to
18 tell me anything about what an attorney said
19 to you, or didn't say to you, which of those
20 versions is the more accurate version?

21 THE WITNESS: I stand by both, and
22 I'm happy to say that the one where I discuss

1 the MLB issue, I stand by it. So, because
2 that had more information, I will stand by
3 that one as being correct, to answer your
4 question.

5 JUDGE SIPPEL: More complete than
6 the -

7 THE WITNESS: Correct.

8 JUDGE SIPPEL: I don't even want
9 to get into whether or not one is correct or
10 not correct. I used that term. I'm sorry,
11 but it's more complete.

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: All right. Now,
14 I'm going to let Mr. Kirk take it from there.

15 BY MR. KIRK:

16 Q And your prior declaration
17 indicated the MLB territories were drafted
18 based on fan demand. Correct?

19 A Yes, I believe so. I believe
20 that's what I put. Yes.

21 Q Okay. Do you have any personal
22 knowledge in support of that statement in your

1 declaration?

2 A Sir, the personal knowledge that I
3 have of that issue comes from my discussions
4 with team officials that tell me that's where
5 the territory is, from the consultants who
6 understand this issue better than I do. But,
7 yes, I believe MLB in their best business
8 judgment defines some of these geographic
9 territories with fan affinity as -- in their
10 mind, and maybe as one of their criteria.
11 This is 1981, I believe, when they did this?
12 And I think Bowey Kuhn was in office, and I
13 was 13, so I really can't tell you what they
14 said in that office.

15 Q I'm just going to walk through
16 some of the things we did in the deposition.
17 Who did you talk to about the Major League
18 Baseball territories being based on fan
19 demand?

20 A I've been in the Regional Sports
21 Network business for over 15 years, and I've
22 worked at one or another, or another for 12

1 years. I've talked to a lot of people over
2 the years, from the Phillies, to the Orioles,
3 to the Nationals about what their territory
4 is.

5 Q And the nature of those
6 discussions, you talked about whether those
7 territories were created based on Major League
8 Baseball's determination of fan demand?

9 A I can't recall what we spoke
10 about, although, we spoke about the Home Team
11 Television Territory, and that's what it is.
12 It's logical to me that fan demand was in
13 anybody's mind who would have created
14 geographic territories for Major League
15 Baseball teams. They wouldn't have given the
16 Orioles Alaska as their territory, but they
17 did give it to North Carolina, Virginia,
18 Delaware, and Maryland.

19 Q And I understand that you believe
20 that's logical, but what I'm asking is, do you
21 recall any specific conversations with any
22 specific individuals regarding this issue?

1 A Sure. There are officials of the
2 Orioles that I've talked to regarding fan
3 demand in these areas. Yes, I have had those
4 conversations.

5 Q Can you point me to this -

6 A I'm sorry. Yes.

7 Q My question is, have you had any
8 specific discussions with specific individuals
9 regarding the creation of the Major League
10 Baseball territories based on Major League
11 Baseball's assessment of fan demand?

12 JUDGE SIPPEL: Well, I think
13 that's an unfair question. He talked to
14 people -- I mean, he has to do a job. He's
15 going to talk to people, obviously, senior
16 people in baseball. But to go beyond that, I
17 think is a bit much to ask this witness.

18 MR. KIRK: He's a fact witness,
19 Your Honor. And he appears to have no basis
20 for his factual statement that Major League
21 Baseball crafted these territories based on
22 fan demand, which is something that was relied

1 upon in the HDO. I'm trying to get at what
2 his personal basis was.

3 JUDGE SIPPEL: All right. I'm not
4 going to argue. I'm not trying to protect the
5 witness. I'm just simply saying that it seems
6 to me that you're pushing a little bit over
7 his head. That's all. Above his pay grade.
8 But go ahead, keep -- you can pursue this a
9 bit more.

10 BY MR. KIRK:

11 Q Have you seen any documents
12 produced by Major League Baseball that
13 indicate that the territories were created by
14 fan demand?

15 A I have not.

16 Q Can you point me to a single
17 conversation, document, any evidence that the
18 Major League Baseball territories were based
19 on fan demand?

20 A So, when I talk to the officials,
21 like I said over the last 15 years, I don't
22 ask them to produce documents. I take them at

1 their word. And those are the people I work
2 for, and those are the rights holders I
3 represent. So, when we have discussions about
4 what anybody would believe would be logical,
5 I don't say well, I need to see that on paper.

6 Q And you've indicated you've had
7 extensive experience in the field. Correct?

8 A In the Regional Sports Network
9 field? I've worked, as I said, for over 15
10 years in the Regional Sports Network business,
11 and 12 years at three of them.

12 Q And before MASN, who did you work
13 for?

14 A Before MASN, I was a consultant in
15 my own consulting company.

16 Q Anyone else?

17 A Prior to that, I worked for -- as
18 Vice President of Comcast Sports Mid-Atlantic.

19 Q Did you ever work for a company
20 called Sports Works?

21 A I did work for a company called
22 Sports Works in a very limited capacity, and

1 only got paid by one client, the Washington
2 Redskins.

3 Q Were you employed by that company,
4 or did you work as a consultant?

5 A Employed is a tough word. I
6 wasn't getting paid by that company. I did a
7 deal with the Redskins to get paid. They
8 paid. It wasn't a full-time company with an
9 office and people, and all that kind of stuff.
10 We created business cards, and we were
11 consultants, because we knew the industry.

12 Q Were you an employee?

13 A Did I fill out a W-9? I'm trying
14 to explain this. It wasn't a real company.
15 It was -

16 JUDGE SIPPEL: You were working
17 for the -- who were you working for?

18 THE WITNESS: This is an
19 independent consulting firm.

20 JUDGE SIPPEL: No, but who were
21 you working for?

22 THE WITNESS: I was working for

1 myself, and with a partner, at that point.

2 JUDGE SIPPEL: And who were you
3 consulting for?

4 THE WITNESS: Oh, I'm sorry. I
5 was consulting, at one point, for the
6 Washington Redskins.

7 JUDGE SIPPEL: Okay.

8 THE WITNESS: At one point, for a
9 group that was trying to buy the Nationals.

10 JUDGE SIPPEL: Okay.

11 THE WITNESS: And then Mr.
12 Angelos, who owns the Orioles and MASN.

13 BY MR. KIRK:

14 Q During the deposition, did you
15 testify that you were working as a consultant
16 for Sports Works?

17 A I believe I did.

18 Q Did you previously submit a
19 declaration under penalty of perjury before
20 the FCC, indicating that you held the position
21 of President for Sports Works?

22 A I did.

1 Q Did I ask during your deposition
2 how you could be President of the company if
3 you were only a consultant?

4 A You may have. I wouldn't argue
5 with you on that one, if you ask me that.

6 Q Do you recall telling me that you
7 referred to yourself as President, because you
8 had to put something on your business card?

9 A Yes. I had a partner who was in
10 charge of -- she was doing the marketing side
11 of it. I was doing the operation analysis,
12 and she put something on her card, which I
13 believe was President of Marketing, and I put
14 something on my card, which was President of
15 Operations and Programming, I believe. If you
16 want to call that an employee, that's fine.
17 I mean, you know, I won't split hairs with
18 you. I'm telling you like it is. I don't know
19 what you're getting at, but that's fine.

20 Q Did MASN compete with Comcast for
21 the rights to the Baltimore Orioles, to the
22 Baltimore Ravens?

1 A They did.

2 Q Who won those rights?

3 A MASN won the rights to the
4 Baltimore Ravens in July of 2006.

5 Q Did MASN outbid Comcast for those
6 rights?

7 A We had no other choice but to
8 outbid Comcast, because we were not carried by
9 Comcast. So, in order for us to get those
10 rights, we had to pay a high price for the
11 rights to the Ravens' preseason games, and the
12 rights to Ravens' programming.

13 Q Despite winning the Ravens'
14 rights, you claim in Paragraph 39 of your
15 testimony that MASN was "unable to win the
16 rights to the Redskins due to coverage gaps."
17 Correct?

18 JUDGE SIPPEL: Is this the last
19 sentence of 39?

20 THE WITNESS: Yes. There's two
21 statements, there's two sentences there.
22 "MASN's limited penetration was cited as a

1 problem during negotiations I undertook with
2 the Washington Redskins in 2008 and 2009 for
3 programming rights." And the last sentence
4 is, "These are significant rights that MASN
5 missed out on, at least, in part, because of
6 MASN's coverage gaps." That's correct.

7 Q Did MASN outbid Comcast for the
8 Redskins rights?

9 A No, it did not.

10 Q So, did it lose the rights because
11 it didn't outbid them, or because of coverage
12 gaps?

13 A MASN did not attain or acquire the
14 Redskins rights because the price was way too
15 high.

16 Q So, not because of coverage gaps.

17 A I believe I say, "At least, in
18 part, because of MASN's coverage gaps" in one
19 sentence. And I say, "We cite is a problem
20 during negotiations." And it was a problem
21 during negotiations. If I had bid an even
22 amount of money for those rights, I don't

1 believe I would have gotten them, only because
2 we were denying over-the-air access to the
3 Redskins for their preseason games and
4 programming, and because Comcast Sports Net
5 had full penetration, and we did not.

6 Q If you outbid Comcast for the
7 Redskins, do you think you would have gotten
8 the programming?

9 A That's a hypothetical. I can't
10 tell you.

11 MR. FREDERICK: Objection.

12 JUDGE SIPPEL: I'll sustain it.

13 BY MR. KIRK:

14 Q Are you testifying that Comcast's
15 failure to launch MASN in Harrisburg, Roanoke-
16 Lynchburg, and Tri-Cities was not based on
17 valid business reasons?

18 A Do you want me to refer to my
19 testimony?

20 Q You can look at Paragraphs 26-45.

21 JUDGE SIPPEL: Do you want to go
22 off the record while he reads those to

1 himself? Why don't we do that. Go off the
2 record.

3 (Whereupon, the proceedings went
4 off the record at 4:43:03 p.m., and went back
5 on the record at 4:43:09 p.m.)

6 JUDGE SIPPEL: All right. Let's
7 go back on the record. Rephrase.

8 BY MR. KIRK:

9 Q Mr. Cuddihy, has Comcast provided
10 valid business reasons to MASN for failing to
11 launch MASN in Harrisburg, Roanoke-Lynchburg,
12 and Tri-Cities?

13 A Valid in my opinion? No.

14 Q Okay. Are there any valid
15 business reasons that would support a cable
16 company's decision not to launch MASN within
17 its territory?

18 A Some cable companies cite
19 bandwidth, some cable companies cite cost,
20 some cable companies cite interest. Clearly,
21 in the areas we're talking about, I do not
22 understand why Comcast has not carried us in

1 those areas, and areas that are 60 miles from
2 the Baltimore DMA, and 54 miles from the
3 Washington DMA. You guys sometimes talk about
4 fringe. There's markets -- there's systems
5 inside the Washington, D.C. DMA that Comcast
6 owns but they have not launched Comcast, not
7 launched MASN. Okay? In Syselton and
8 Montross, Comcast has refused to launch MASN
9 within 60 miles of the stadiums.

10 Q Do you know what the bandwidth is
11 on those systems?

12 A I don't, and I don't equate
13 bandwidth with fan affinity, so I -- if a
14 system is 50 miles away, they've got the other
15 Regional Sports Networks on there, Comcast
16 should get our's.

17 Q Is bandwidth a legitimate business
18 reason for not carrying MASN?

19 MR. FREDERICK: Objection; calls
20 for a legal conclusion, Your Honor.

21 JUDGE SIPPEL: Let me hear the
22 question again.